

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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Amalgamated Union Local 298 Health Benefit Fund I,  
Joseph Giovinco, Jr., Victor LaGreca, Mitchell  
Goldberg and Mark Abramowitz, in their fiduciary  
capacities as Administrators and Trustees of  
Amalgamated Union Local 298 Health Benefit Fund I,  
Amalgamated Union Local 298 Pension Fund, Mitchell  
Goldberg, Victor LaGreca, Joseph Giovinco, Jr., and  
Ralph Mascolo, as Administrators and Trustees of  
Amalgamated Union Local 298 Pension Fund and  
Amalgamated Union Local 298, International Union of  
Allied Novelty and Production Workers, AFL-CIO,

Plaintiffs,

-against-

Admiral Photo Offset Co, Inc., Admiral  
Mailing Co., Inc., Admiral Since 1946, Inc., Sprint  
Graphics, and Arthur Baron, individually and  
in his fiduciary capacity as trustee for Amalgamated  
Union Local 298 Health Benefit fund I,

Defendants.

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GOLD, S., U.S.M.J.:

REPORT and  
RECOMMENDATION  
CV-06-488 (NG)

Plaintiffs filed this action in February, 2006 pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§1132(a)(2)(3), 1145, and 1381, and the Labor Management Relations Act (“LMRA”), § 29 U.S.C. 185. Upon plaintiffs’ application and in light of the defendants’ failure to appear or otherwise defend this action, the Clerk of the Court noted the default of all defendants pursuant to Rule 55(a) of the Federal Rules of Civil Procedure in September, 2006. The Honorable Nina Gershon then referred this case to me to report and recommend on the amount of damages and other relief, if any, to be afforded. An attorney subsequently appeared on behalf of two of the defendants – Admiral Since 1946 and Arthur

Bacon – and the claims against these defendants were ultimately dismissed. See Order dated May 2, 2007, Docket Entry 28. Accordingly, the remaining issue is the amount of damages to be assessed against Admiral Photo Offset, Admiral Mailing, and Sprint Graphics.

Upon reviewing plaintiffs' submission in support of their motion for default judgment, several questions arose. On June 11, 2008, I issued an Order requesting additional information from the plaintiffs. A response to the Order was due no later than June 27, 2008. As of today's date, no response has been filed.

After issuing the Order, Chambers' staff left several messages for plaintiffs' counsel alerting them to the order.<sup>1</sup> Plaintiffs' counsel has failed to respond to my Order or otherwise communicate with the Court.

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<sup>1</sup>During a telephone call to plaintiffs' counsel in May, 2008, Joseph Rizzo indicated that the attorney of record on this case is no longer on the case and instead he was responsible for the case. Mr. Rizzo was directed to file a notice of appearance to ensure notification of any Orders in this case, but has failed to do so.

Accordingly, I respectfully recommend that this case be dismissed for failure to prosecute unless, within the time for filing objections, plaintiffs respond to my June 11, 2008 Order. In an abundance of caution, this Report and Recommendation will be filed electronically and mailed to counsel. Any objections to the recommendations made in this Report must be filed within ten days of this Report and Recommendation and, in any event, on or before July 28, 2008. Failure to file timely objections may waive the right to appeal the District Court's Order. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a), 6(e), 72; *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

/s/  
**Steven M. Gold**  
**United States Magistrate Judge**

**Brooklyn, New York**  
**July 11, 2008**

A COPY OF THIS REPORT AND RECOMMENDATION WAS SENT ON THIS DAY TO:

Joseph Rizzo  
DeMartin & Rizzo , P.C.  
870 West Jericho Turnpike  
Huntington, NY 11743

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